IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 205 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHBHAI @ DILIYO HARMANBHAICHAUHAN

Versus

STATE OF GUJARAT & another

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Appearance :

Mr. Yatin Soni for the appellant

Ms. Nandini Joshi, APP, for the respondents

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE A.S.DAVE

Date : ____/07/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.S.DAVE)

1.In this appeal, which is filed under Section 374 of the Code of Criminal Procedure, appellant, original accused No.1, has challenged judgment and order dated 22nd January 2001, passed by the learned 3rd Joint District Judge and Additional Sessions Judge, Kheda, Camp at : Anand, in Sessions Case No.153 of 1998, whereby, the appellant came to be convicted for the offence punishable under Sections 302, 307, 504 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act and sentenced to undergo R.I. for life and fine of Rs.1000, in default, S.I. for three months.

2.The factual matrix of the prosecution case begins on the basis of the first information report dated 14th January 1998, when, information as to cognizable offence came to be disclosed by Lalitaben, wife of deceased Vinubhai Punambhai Chauhan, aged 15 years, and a resident of village Gamdi, Taluka: Anand. According to the complainant, the deceased was doing battery repairing work at Chikhdha chokdi. That, Shri Ranchhodbhai Nanabahi Chauhan along with his family was living opposite her house. That, a ten-feet wide passage was there for the movement for the people in the street. That, work of construction of a new house close to the above passage located near the place of old house was started and in connection with projection of balcony towards the passage, a quarrel had taken place with Shri Ranchhodbhai Nanabhai Chauhan a week prior to the date of the incident. Therefore, the deceased had given an application to the police and the police had taken steps against them. That the daughter of Shri Ranchhodbhai, Dakshaben, was having illicit relation with Dineshbhai Harmanbhai Chauhan, residing in Luharwala faliya, at Gamdi and the deceased had seen both of them while

doing such wrongful deed at 2 a.m., in the new house of the complainant. That, Dineshbhai Harmanbhai Chauhan was in search of an opportunity to beat the deceased, but no complaint has been made in this regard.

3.It is the case of the complainant that on 14th January 1998, being the festival of Uttarayan, the deceased and his family members were present in their house. That, at about 5.30 p.m., Dineshbhai Harmanbhai Chauhan, came from opposite direction of the house of the complainant and told her husband that his brother, Raysingbhai was calling him outside and her husband went with him and, therefore, the complainant also followed her husband. At that time, Sureshbhai @ Lalo @ Ranchhodbhai was also standing near Bhathiji temple. While passing near Bhathiji temple, the deceased asked Dineshbhai where his brother Raysingbhai was. Dineshbhai replied that 'his brother Raysingbhai was there at his home so you have to come to his home'. The deceased refused to go to his house. Therefore, Dineshbhai abused the deceased and had scuffle with him. Dineshbhai brought out a knife from his pocket of pants and at once gave a blow of knife forcefully on the left side of the rib cage of

the deceased and the deceased fell down on the ground at once. That, to prevent the deceased from further blows, the uncle-in-law's son of the complainant, Maheshbhai Ratanbhai Chauhan, interfered. Dinesh also gave blows of knife which he has in his hand, on the part of chest of Maheshbhai. Meanwhile, Dineshbhai gave blows after blows of knife to the deceased and Maheshbhai and Suresh @ Lalo Ranchhodbhai Chauhan, who was standing near there, was provoking for killing the deceased and Maheshbhai. The complainant had closely seen her husband, as they both were profusely bleeding. At that time, as the complainant shouted, her uncle-in-law, Ratanbhai Nanabhai and Rameshbhai Gemalsinh Chauhan, etc. arrived and they fled from there. As her husband and Maheshbhai were seriously injured, they were profusely bleeding. While the injured were taken to Anand Nagarpalika Hospital in a Fiat car of Rohitbhai Maganbhai Patel, the husband of the complainant succumbed to the injuries and died on the way. The dead body of the husband of the complainant and injured Maheshbhai were carried to the government hospital for treatment and, after primary treatment of Maheshbhai, he was taken to Karamsad Hospital for further treatment.

4.On investigation being carried out by the Investigating Officer, charge sheet was filed for the offences under Sections 302 and 307 of the Indian Penal Code, against the appellant in the Court of learned Judicial Magistrate, First Class, Anand. As the offence punishable under Section 302 of the IPC is exclusively triable by a Court of Sessions, the case was committed to the Court of Sessions, Anand, for trial, where it was numbered as Sessions Case No.153 of 1998.

5.Charge Exh.3 was framed against the appellant for the offence punishable under Sections 302, 307, 504 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried.

6.In order to prove its case against the appellant, the prosecution had examined 16 witnesses, namely:

(1)P.W.1. Lalitaben Vinubhai (complainant), Exh.10;

(2) P.W.2, Maheshbhai Ratansinh Chauhan, (injured), Exh.18;

(3) P.W.3, Hashmukhbhai Somabhai Chauhan, Exh.19
(4)P.W. 4, Dr. Rameshchandra Kantilal Trivedi, Exh.25;
(5) P.W. 5, Dr. Vinaykumar Prasanna Khanapur, Exh.26;
(6) P.W.6. Dr. Pratimaben Naginbhai Parmar, Exh.36;
(7) P.W.7, Mehmoodbaig Usmanbaig Mirza, Exh.40;
(8) P.W.8, Prakashbhai Dharmaji Marwadi, Exh.43;
(9) P.W.9, P.S.I, Abeysinh Navalsinh, Exh.45;
(10) P.W.10, Rohitbhai Maganbhai, Exh.47;
(11) P.W.11, Ratansinh Nanabhai Chauhan, Exh.49;
(12) P.W.12, Nazirmohmmad Huseinbhai Malek, Exh.53;
(13) P.W.13, Dineshchandra Nanakchandra Mishra; Exh.59;
(14) P.W.14, Purshottambhai Mahijibhai, Exh.75;
(15) P.W.15, Abeysing Navalsing Rathod, Exh.77;
(16) P.W.16, Romeshbhai Jivabhai Masiha, Exh.85;

The prosecution had also produced documentary evidence such as:

1.Complaint of Lalitaben Vinubhai Exh.16;
2. Inquest panchanama, Exh.44;
3. Panchanama of scene of offence, Exh.23;
4.Panchanama of cloth of the deceased, Exh.31;
5. Panchanama of cloth of injured, Exh.32;
6. Yadi , Exh.27;
7. P.M. Notes, Exh.30;

8. Medical certificate of Maheshbhai Chauhan, Exh.28;
9. Muddamal report to FSL, Exh.60;
10. Receipt of muddamal from FSL Exh.61;
11. FSL Report Exh.62
12. Serological report Exh.63;
13. Copy of public notice Exh.64;
to prove the case against the appellant.

7 After recording of evidence of prosecution witnesses was over, the learned Additional Sessions Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure. The appellant, in his further statement, denied the charges. The appellant, however, did not lead evidence in his defence.

8. So far as the witnesses of the prosecution are concerned, P.W. 1, Lalitaben, wife of deceased Vinubhai, Exh.10, has disclosed information to the police on the basis of which the first information report came to be registered at Exh.16, being C.R. No.26 of 1998,

dated 14th January 1998 at Anand Police Station. According to her version, she had seen one Dineshbhai Harmanbhai Chauhan, the present appellant, bringing out a knife from his pocket of pants and gave blows of knife forcefully on the left thigh on the part of rib and her husband fell down on the ground. In the meanwhile, one Shri Maheshbhai Ratanbhai Chauhan intervened to save her husband, who also received injuries of knife blows inflicted by the present appellant on the part of chest of Maheshbhai also. Later on, she found her husband and Maheshbhai both profusely bleeding and she started shouting and two relatives thereafter immediately rushed to the place of incident. Thereafter, since the husband of Lalitaben and Maheshbhai were seriously injured and profusely bleeding, they were taken to Anand Nagarpalika Hospital and the husband of Lalitaben died on the way while taking to the hospital. Thereafter, the dead body of the husband of Lalitaben, and injured Maheshbhai were taken to the government hospital and, later on, injured Maheshbhai was taken to Karamsad Hospital for further treatment.

8.1 The above incident took place on 14th January 1998, i.e., the day of kite flying, Makar Sankranti and, according to the astrology, the

Sun moves to one of the zodiacal constellations, called Makara, and, therefore, number of persons were busy flying kite on their terraces.

8.2 It is the further case of the prosecution that, injured witness, Maheshbhai, P.W.2, Exh.18 and nephew of the deceased, has almost repeated and fortified the version of the complainant, Lalitaben, wife of the deceased Vinubhai. According to injured witness, Maheshbhai, Dineshbhai, the present appellant, had inflicted blows of knife on the deceased and he saw it from very near distance and immediately intervened to save his uncle and, in the meanwhile, he also received injuries by said Dineshbhai who inflicted a blow of knife on the left side of the chest. Thereafter, he had taken treatment, etc.

8.3In the presence of P.W.3, Hashmukhbhai Somabhai Chauhan, Exh.19, panch witness, panchanama of scene of offence was drawn where blood spots on sand nearby were found and a knife also with blood stains was recovered. P.W.4,Dr. Rameshchandra Kantilal Trivedi, Exh.25, confirmed about the injuries received by injured witness, Maheshbhai and advised that the injured be taken to the government hospital at Anand. Even, P.W. 5, Dr. Vinaykumar Prasanna

Khanapur, Exh.26, who had carried out post-mortem and who had given treatment to the injured witness, in his person, stated about receiving dead body of Vinubhai at 18.00 hrs on 14th January 1998 along with injured Maheshbhai. He further stated that on the left chest of injured Maheshbhai, 0.9" x 0.5" below, an injury was found and the same was inflicted with sharp-edged weapon. About the deceased Vinubhai, the injuries were deep in the chest and also on the left side of abdominal cutting across mussels. So far as the first injury is concerned, it had also cut across outer layer of the heart and, according to him, the said injury was sufficient to cause death in its natural course.

8.4 P.W.6. Dr. Pratimaben Naginbhai Parmar, Exh.36, has stated that injured Maheshbhai was sent for further treatment at the government hospital at Anand and he was conscious and she found the injury on his chest.

8.5 So far as the version of the defence is concerned, according to him, the information given by Lalitaben, wife of the deceased, is nothing, but a statement under Section 162 of the Code and not the complaint. There appears to be contradiction in the statements of PSO, who had recorded the complaint of Lalitaben. It

was further submitted that, though statements of 23 witnesses were recorded, none of them has acted as witness and even the medical evidence does not support the nature of injuries and the weapon used by the appellant, since there are, again, contradictions in the deposition of Doctors who had initially seen the deceased Vinubhai and later on injured witness, Maheshbhai. Even motive is also missing and the version of the prosecution about motive is unbelievable. Therefore, it was submitted that the charges framed against the appellant were not proved beyond any doubt and the appellant was entitled to acquittal.

9. The learned Judge, after considering the rival submissions and on perusal of the documentary as well as oral evidence in the form of depositions, various panchanamas, including post-mortem notes and medical evidence, found the case of the prosecution worth accepting, mainly on the ground that the complainant, Lalitaben, who is also an eye-witness, has confirmed the same in her deposition in the trial. Not only that, but, the injured witness, Maheshbhai, nephew of the deceased, who had intervened to save his uncle, deceased Vinubhai, and who had also received injuries on his chest by the knife

blow inflicted by the appellant, clearly narrated the true version of the incident and his deposition also confirmed beyond any reasonable doubt about the role of the present appellant of committing murder.

9.1 The learned Judge, in detail, examined the nature of injuries inflicted upon the deceased Vinubhai as well as injured witness, Maheshbhai, panchanama of scene of offence, post-mortem notes, opinion given by the Doctors, and other medical records, cause of death, motive and found that a case was made out against accused No.1, the present appellant, beyond any reasonable doubt and convicted the appellant for offence punishable under Sections 302, 307, 504 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act and sentenced to undergo R.I. for life and fine of Rs.1000, in default, S.I. for three months, which has given rise to the above-numbered appeal.

10.Shri Yatin Soni, learned counsel for the appellant-original accused No.1, has submitted that yadi Exh.27 is the information disclosing cognizable offence first in point of time which was received by the PSO at 18.10 hrs on 14th

January 1998, which mentions about the alleged incident and, therefore, the above yadi becomes first information report and not the version given by Lalitaben, wife of the deceased, which is recorded and exhibited at Exh.16. According to the learned counsel for the appellant, therefore, yadi Exh.27 is to be treated as first information report and the evidence of Lalitaben is required to be appreciated as of a witness and not as a complainant. He has vehemently contended that there are several contradictions in the case of the prosecution and, looking to the overall evidence, the case of the prosecution is doubtful since no independent witnesses were examined by the prosecution and, therefore, the appellant deserves acquittal by giving benefit of doubt. He has invited the attention of the Court to the evidence of P.W.1, Lalitaben, Exh.10, and submitted that there are contradictions in her statement recorded on 14th January 1998 and on the next date i.e., on 15th January 1998. In the statement of Lalitaben recorded on 15th January 1998, her reference to the allegations against Madhur Rama Thakore and Shaboo Harman Parmar about beating her husband and Maheshbhai, was earlier not made. Her version is also not supported by P.W.11, Ratansinh Nanabhai

Chauhan, Exh.49, father of the injured Maheshbhai. That, even her statement about the presence of police at the hospital is also not trust-worthy and even not supported by the statement of injured witness, P.W.2, Maheshbhai Ratansinh Chauhan, whose statement came to be recorded at Exh.86 by the Executive Magistrate and later on in the deposition at Exh.18. It is also submitted that the version of Lalitaben and Maheshbhai about the place of alleged incident indicates two different places. According to Lalitaben, the alleged incident took place near Bathiji temple, while Maheshbhai says about such incident having taken place at the old residence of the deceased, Vinubhai. There are contradictions in the evidence of panch witness of scene of offence, P.W.3, Hashmukhbhai Somabhai Chauhan, Exh.19, and the evidence of the Executive Magistrate Exh.85. It is also submitted that, according to Lalitaben though she was present, no efforts were made by her to save her husband. Therefore, the evidence of Lalitaben is not trust-worthy and unbelievable.

10.1 The second submission of Shri Yatin Soni, learned counsel for the appellant is about the evidence of injured witness, P.W.2,

Maheshbhai Ratansinh Chauhan, Exh.18, who has not given evidence about the presence of other persons whose names were disclosed by P.W.1, Lalitaben, wife of the deceased. Therefore, even the evidence of injured witness, P.W.2, Maheshbhai Ratansinh Chauhan, Exh.18, is not believable in view of contradictions.

10.2Shri Yatin Soni, learned counsel for the appellant, has also submitted that even with regard to muddamal article, knife, there are different versions. As per the case of the prosecution, knife was recovered from the open space on the next day i.e. On 15th January 1998 and it was found that the sharp front portion of the knife was bent and the length of knife was 6" including blade, whereas the report of FSL indicates the length of knife about 9". So far as the FSL report is concerned, blood-stain was found in the muddamal article No.5, while the report of Serologist reveals that the blood-group of muddamal article was not detected. So far as the version of panch witness, P.W.3, Hashmukhbhai Somabhai Chauhan, Exh.19, is concerned, it states about pointed knife with blood-stain with little bit bent in the front portion. Even P.W.6. Dr. Pratimaben Naginbhai Parmar, Exh.36, in her cross

examination, states that if pointed portion of knife was bent by 1 c.m., the width of injury would be more. Therefore, according to Shri Yatin Soni, learned counsel for the appellant, even muddamal article No.5, knife, recovered by the prosecution is a doubtful story. The above contradictions are sufficient enough to discard the theory of prosecution that death of the deceased was due to inflicting blows of knife, which was recovered from the scene of offence.

10.3 Shri Yatin Soni, learned counsel for the appellant, has also submitted that even there is absence of motive and, as alleged by the prosecution, the deceased was having illicit relationship with one Daksha, who is the sister of accused Suresh @ Lalu, now acquitted by the trial court, which is also not possible, because, as per the complainant herself, Suresh is also one of the accused and committed murder of her husband, Vinubhai. Even the second possible motive about the dispute about the construction of the house is also contrary to the record and the appellant has nothing to do with the construction.

10.4 Shri Yatin Soni, learned counsel for the appellant, relied upon the judgments of the

Supreme Court in the case of Damodar v. State of Rajasthan, reported in AIR 2003 SC 4414 and in the case of Upkar Singh vs. Ved Prakash and others, reported in AIR 2004 SC 4320, and submitted that, since the evidence of eye-witnesses or injured witnesses is not trust-worthy, benefit of doubt must go to the accused.

11. Ms. Nandini Joshi, learned Additional Public Prosecutor, appearing for the respondent-State, submitted that the whole case of the prosecution case is based on the trust-worthy and reliable evidence of complainant, P.W.1, Lalitaben Vinubhai, Exh.10, wife of deceased Vinubhai, who was present at the time of the incident where her husband was repeatedly stabbed by the appellant with knife. Not only that, but the complainant has narrated clear version about the actual happening at the place of incident where the crime was committed. She has submitted that, being the wife of the deceased, the complainant has followed her husband when he was attacked by the appellant and her presence was natural. Some minor contradictions in her two statements dated 14th January 1998 and 15th January 1998 do not create any doubt about credit-worthiness and trustfulness of her version. She

has further submitted that not only Lalitaben, but, injured witness, P.W.2, Maheshbhai Ratansinh Chauhan, Exh.18, has clearly deposed in his statement about inflicting repeated blows of knife by the appellant and it gives corroboration to the statement of the complainant, P.W.1, Lalitaben, wife of the deceased. According to the learned APP, even the statements of P.W.5, Dr. Vinaykumar Prasanna Khanapur, Exh.26 and P.W.6, Dr. Pratimaben Naginbhai Parmar, Exh.36, clearly indicate about the injuries inflicted upon the deceased, usage of weapon, etc. Even the medical reports, post-mortem notes, scene of offence panchanama, FSL report, serological report do also give creditable support to the case of the prosecution. The learned Additional Public Prosecutor, has further submitted that recording of complaint Exh.16 as first information report by the concerned police officer is in accordance with law and, in support of above arguments she has relied upon the decision of the Supreme Court in the case of Northern Plastics Limited vs. Hindustan Photo Films Mfg. Co. Ltd (1997) 4 SCC 452 and in the case of Joginder Singh vs. State of Punjab, reported in AIR 1979 SC 1876 and in the case of Binay Kumar Singh vs. State of Bihar, AIR 1997 SC 322. It is also submitted that the version of P.W.6, Dr. Pratimaben Naginbhai

Parmar, Exh.36, is an answer to the hypothetical question, but the fact remains that the knife was found from the scene of offence with blood stain. Lastly, it was argued on behalf of the State that, as the prosecution has proved its case beyond reasonable doubt that the appellant had murdered deceased Vinubhai by means of knife, conviction recorded by the learned Judge should be upheld.

12. Before we proceed to deal with the contentions of the learned counsel for the parties, it would be profitable to describe nature of injuries, as found, as per the post-mortem notes, in column No.17, as under:

“(1) An incised stab wound of 0.9” x 0.5” x Aorta deep on left interior aspect of chest 2” below 1” lateral to left nipple clipticle in shape and sloping to Rt side.

(2)An mayed stab wound of 1.7” x 0.4” ribs deep on left under axillary region of chest 6” lateral to left nipple sloping to left Rt-side.

(3)An incised stab wound of 0.7” x 0.4” x made deep on left portion of abdomen 4.5” left to umbiliyas.”

The above injuries were inflicted upon the deceased, Vinubhai.

13 The nature of injuries inflicted upon the injured, P.W.2, Maheshbhai, as it is reflected from the medico-legal certificate issued by the Casualty Medical Officer on 23.2.1998, reads that:

“Stab wound (stured) of approxi 1.5” length in fine over (L) side of chest in Ant. Axillary line. Depth of stab wound cannot be assessed. Without exporting it.

Srounding minimal subant. Emphyseme (+) in 4H intemostal spare”

14.The above injuries inflicted upon the deceased Vinubhai and injured P.W. 2. Maheshbhai, reveal usage of shape-edged weapon for inflicting such injuries.

15. So far as submission of Shri Yatin Soni, learned counsel for the appellant, about contradiction in the statements of the complainant, P.W.1, Lalitaben, as recorded on 14.1.1998 and 15.1.1998 is concerned, some contradictions of minor nature appeared about the presence of two persons at the time of offence, but, the appellant-accused, Dineshbhai, inflicting injuries with knife upon the deceased and the intervenor, Maheshbhai, does not get obliterated by such minor

contradictions. Nature, number and extent of injuries inflicted upon the deceased, Vinubhai, and injured Maheshbhai, do get full support from other documentary evidence and deposition on record.

16. It has been vehemently contended by Mr. Soni, the learned counsel for the appellant, that the Court below ought to have treated yadi Exh.27, which is the information received first in point of time disclosing cognizable offence,as the FIR and not the complaint Exh.16 of Lalitaben. We have gone through the same. Law on this point is well settled that, if vardi received appears to be cryptic though received first in point of time, it cannot be treated as FIR. On comparing yadi Exh.27 with the complaint Exh.16 of Lalitaben, we are of the opinion that the Court below is legally right in treating the complaint of Lalitaben as the FIR and, hence, we do not find any substance in the said contention of Mr. Soni. Even otherwise, it is clear from the deposition of P.W.1, Lalitaben, and P.W.9, PSO Abeysinh Navalsinh that information that the incident disclosing cognizable offence was given in the police station and the same was taken note of. Not only that, considering the nature of

offence, it required visitation at the place of offence and the same was also recorded. Deposition of P.W.9, PSO Abeysinh Navalsinh is clear, which states that he had recorded above information and also noted in his station diary. According to the version of P.W.9, PSO Abeysinh Navalsinh, yadi was received by him from the General Hospital of Anand Municipality, signed by the Medical Officer. According to him, one female and three males were present at the police station. So far as deposition of P.W.13, PI, Dineshchandra Nanakchandra Mishra, Exh.59, is concerned, he has stated that the offence was registered by the Police Station Officer incharge. He has further stated that yadi sent by the Medical Officer of the General Hospital of the Anand Municipality was received by the concerned PSO, Abeysinh Navalsinh and the same was verified by him. Therefore, from the record and depositions of above witnesses, it is established that the version of the complainant, P.W.1, Lalitaben, about lodging first information report in the police station does get support and corroboration from the depositions of the other two witnesses.

17.So far as the version of P.W.1. Lalitaben, is

concerned, she has narrated that accused, Dineshbhai, had come to call her husband, Vinubhai, under the pretext that his brother, Raisingbhai, required his presence. She has also stated that since the husband of P.W.1. Lalitaben, refused to go to his house, a scuffle took place, which resulted into inflicting a blow of knife upon the deceased, Vinubhai. According to P.W.1. Lalitaben, dispute about construction of balcony of her new building with one Ranchhodbhai and his sons, did exist. Even the deceased, Vinubhai, had knowledge about the illicit relation with one Dakshaben, daughter of Ranchhodbhai and sister of Suresh, one of the accused. Therefore, the say of P.W.1. Lalitaben, about the presence of Suresh along with accused, Dineshbhai, cannot be said to be unbelievable. Besides, P.W.2, Maheshbhai, who also received injuries in the scuffle with knife, clearly supported the version of P.W.1. Lalitaben. Therefore, deposition of P.W.1. Lalitaben, who happened to be the wife of the deceased, Vinubhai, following him near the place of offence, is not only trust-worthy, but also inspires confidence. Her presence is also natural and there is nothing to disbelieve the version of P.W.2, Maheshbhai, who had received

injuries while intervening the scuffle, which took place.

18. The above injuries inflicted by the knife upon the deceased, Vinubhai and injured witness, P.W.2, Maheshbhai, do get support from the medical evidence in the form of post-mortem notes and medico-legal certificate issued by the concerned Medical Officer. The nature of injuries received by the deceased as well as injured witness are also reproduced hereinabove, which reveal a deep wound in the chest and abdomine of the deceased, Vinubhai, and also a wound inflicted by the sharp-cutting weapon upon the chest of P.W.2, Mahesbhai. The deposition of the Doctor, who treated P.W.2, Maheshbhai, namely, P.W.6, Dr. Pratimaben Naginbhai Parmar, Exh.36, clearly indicates possibility of such injury by a sharp-cutting weapon. The injuries were described by private Doctor, P.W.4, Dr. Rameshchandra Kantilal Trivedi, Exh.25, who had seen P.W.2, Maheshbhai bleeding and, in view of the police case, referred to the same to the General Hospital of Anand Municipality, where P.W.5, Dr. Vinaykumar Prasanna Khanapur, Exh.26, explained all the injuries in his deposition. Since the injured witness, P.W.2. Maheshbhai, was serious, he was

referred to the Medical Hospital, Karamsad, for better treatment. There also, his statement was recorded by the Executive Magistrate in the form of dying declaration confirming the said nature of injuries, which are found at Exh.86. The version of P.W.2, Maheshbhai, recorded by the Executive Magistrate, also indicates the method and manner in which the injuries were inflicted upon the deceased, Vinubhai and P.W.2, Maheshbhai.

19. So far as usage of knife, muddamal Article No.5, as sharp-cutting weapon for inflicting injuries by the accused is concerned, as per the FSL report and the serological report, the same is found stained with blood of human-being. The fact that the front portion of knife was bent little bit does not benefit the accused, as the weapon was recovered from the place of offence as per the panchanama of scene of offence. Even blood-stained earth is also found containing B+ group of the deceased.

20. It is also borne out from the depositions of witnesses, P.W.1, Lalitaben, P.W.2, Maheshabhai, P.W.10, Rohitbhai Maganbhai, Exh.47, P.W.11, Ratansinh Nanabhai Chauhan, Exh.49, that the incident did take place near

Bhathiji temple. The say of P.W.2, Maheshbhai, about the place of incident, which is a little away from Bhathiji temple, cannot be doubted, since in a small street or village, a place can be identified by well-known location and, in the present case, since the temple of Bhathiji was situated on the street, narration of the said place by the witnesses is nothing, but natural.

21. So far as the approach of the Court in appreciating the credibility of a rustic witness is concerned, the Apex Court, in Shivaji vs. State of Maharashtra, AIR 1973 SC 2622, observed that:

> "The Court which has seen the witnesses depose, has a great advantage over the appellate judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial judge of observing the demeanour and delivery, of reading the straight forwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious unveracity, of persons who swear to the facts before him. Nevertheless, where a judge draws his conclusions not so much on the directness or dubiety of the

> witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can a fetish be made of the trial judge's psychic insight.”

It is further observed that:

> “Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given on sterling testimony of a competent, honest man, although as a rule of prudence courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs.”

In another decision of the Apex Court in the case of State of Jammu and Kashmir vs. Hazara Singh and another, reported in AIR 1981 SC 451, it has been observed by the Apex Court that in a given case even if some infirmities are found in the evidence of the eye-witness, the substratum of the evidence of such eye-witness has to be seen along with other corroboratory piece of evidence and only because the witness was partition or interested, the same cannot be rejected. In another decision of the Apex Court, in the case

of Mer Dhana Sida vs. State of Gujarat, reported in AIR 1985 SC 386, on scrutiny of facts, the Apex Court found that there were three injured witnesses which required a convincing submission to discard the evidence of injured witnesses, whose injuries would at least permit a reasonable inference that they were present at the time of occurrence. It is also required that there must be evidence to show that these witnesses received injuries in the same occurrence. It is also required that there must be evidence to show that these witnesses received injuries in the same occurrence. Since all three witnesses had consistently deposed about usage of weapon by accused against them, it was held that the High Court was not wrong in discarding the conclusion of the Sessions Judge of not believing the evidence of the above injured witnesses and arriving at a definite conclusion that deposition of the injured witness worth reliable.

22.In the present case, the substratum of the depositions of P.W.1, Lalitaben, an eye-witness, though happened to be the wife of the deceased Vinubhai and P.W.2, Maheshbhai, injured witness, clearly establishes inflicting of knife blows by the appellant upon the deceased Vinubhai as well as upon Maheshbhai.

23.It is also to be noted that, in a recent decision, in the case of State of Jammu & Kashmir v. Mohan Singh and another, reported in AIR 2006 S.C 1410, the Apex Court has held that, in a given case, non-examination of some eye-witnesses, if for the reasons beyond the control of the prosecution, cannot be fatal for the prosecution case. So far as the case of the prosecution is concerned, if it is supported by the eye-witnesses, conviction of the accused can be upheld.

24. Therefore, considering the above evidence, and the decision of the Apex Court in AIR 1973 SC 2622 [Shivaji Sahebrao Bobade vs. State of Maharashtra] and AIR 1981 SC 457 [Padman Meher and another vs. State of Orissa], about version of eye-witnesses and approach of the Court in relying upon the statement of injured witnesses as recorded in AIR 1985 SC 386, and even minor discrepancies in the medical evidence and eye-witnesses do not weaken the case of the prosecution, as reported in AIR 1972 SC 1853 [Janak Singh vs. The State of U.P] and AIR 1979 SC 1876 [Joginder Singh v. State of Punjab], we do not find any infirmities in the judgment of the learned Sessions Judge in appreciating

evidence, oral as well as documentary, which require interference of this Court in exercise of appellate jurisdiction under Section 379 of the Code.

25. In the result, the appeal is dismissed. The muddamal be disposed of as per the directions given by the learned Sessions Judge in the judgment and order dated 22nd January 2001.

[R.P. Dholakia, J.]

[Anant S. Dave, J.]

(swamy)